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# In the Supreme Court of the United States

OCTOBER TERM, 1953

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No. 456 Misc.

MARGUERITE ELIZABETH FREDERICKS, PETITIONER

*v.*

UNITED STATES OF AMERICA

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*ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

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**BRIEF FOR THE UNITED STATES IN OPPOSITION TO THE GRANTING OF THE PETITION FOR A WRIT OF CERTIORARI**

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**OPINIONS BELOW**

The opinion of the District Court (R. 106-119) is not reported. The opinion of the Court of Appeals (R. 225-229) is reported at 208 F. 2d 712.

**JURISDICTION**

The judgment of the Court of Appeals was entered on December 30, 1953 (R. 230), and a petition for a rehearing was denied on February 4, 1954

(R. 231-238). The petition for a writ of certiorari was filed on March 1, 1954. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1). See also Rules 37(b)(2) and 45 (a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether narcotics, seized by city police in a search without a warrant of petitioner's premises, were properly admitted as evidence in a federal prosecution.

2. Whether the evidence was sufficient to support petitioner's conviction.

STATEMENT

Petitioner and three others were charged with narcotic law violations in an indictment in three counts returned in the United States District Court for the Southern District of Texas. The first count charged conspiracy in violation of 26 U. S. C. 2557(b); the second, unlawful possession of 10 grains of heroin which did not have the appropriate tax stamps attached, in violation of 26 U. S. C. 2553(a); and the third, the receipt and concealment of this same heroin in violation of 21 U. S. C. 174. (R. 5-9.) In a trial without a jury petitioner was found guilty on all counts, and sentenced generally to imprisonment for two years and a fine of one dollar (R. 119, 121-122). On appeal the conviction was unanimously affirmed (R. 123-124, 230).

The pertinent evidence, as disclosed at the pretrial hearing on the motion to suppress evidence and at the trial, may be summarized as follows:

On December 10, 1952 the United States Com-

missioner at Houston, Texas called the U. S. Marshal's office and requested that petitioner be arrested since her bondsman wanted to be released from her bond (R. 165-166, 173). Deputy Marshal Matthews located the tourist cabin where petitioner resided, spent most of the night waiting for her, instructed a tourist court employee to phone when petitioner arrived, and returned to his home (R. 166-168).

At about 6:30 a. m. on December 11 the employee phoned Matthews that petitioner had returned, that he had seen a large sum of money being counted on a table, that there were several boys and a lady with petitioner, and that the situation looked suspicious (R. 168, 175). Since Matthews feared that petitioner might leave before he could reach the cabin, he phoned Lieutenant Martin of the Houston Police Department, requesting petitioner's arrest and giving the other information about the suspicious circumstances concerning the persons with petitioner. At this time Matthews had no information of a possible narcotic violation by petitioner; and although the offense for which the U. S. Commissioner wanted petitioner arrested on her bond was a narcotic charge, Matthews wanted her picked up for the Commissioner, and not at the request of federal narcotic authorities. (R. 168, 175-176.) Martin phoned another police officer, Murray, to tell him of the suspicious money counting incident as reported by the deputy marshal, but did not give any instructions about arresting petitioner or any named person (R. 205, 206). Murray in turn contacted by radio two detectives in a squad

car near the tourist camp, related the incident of the money counting, and directed them to investigate since the parties might be suspected hi-jackers who had been operating recently in that neighborhood. Murray did not instruct the detectives to arrest petitioner or any particular person. (R. 182, 194, 206-207.)

The two detectives and two uniformed Houston policemen, whom the detectives had contacted for help, then proceeded to the tourist cabin at about 7:35 a. m. (R. 138, 139, 145). They did not have a warrant of arrest or a search warrant (R. 53-54, 143-144, 188-189). After petitioner opened the door in response to a knock, she tried to close it again, but the officers forced their way in and immediately placed petitioner, Mrs. Jarvis, Hall and Ortiz under arrest for suspected hi-jacking (R. 55-56, 63, 153, 164-165, 185, 187). The officers found Hall counting about $200 to $300 on a bed and the other occupants nearby, and assumed that the money had been obtained by hi-jacking (R. 42, 49, 56, 186-187). The officers testified that there had been recent hi-jacking in the vicinity, that they were investigating for hi-jacking suspects, and that they had no information concerning narcotic violations (R. 47, 48, 63, 145-146, 161-162, 175, 182, 193).

In the search of the cabin after arrest of the occupants the officers found 10 grains of heroin and several hypodermic needles (R. 30, 33, 57, 100, 152-153, 188). No federal officers were present at or joined in the search (R. 145, 200). About five hours later the articles discovered in the search were

turned over to the federal narcotic authorities, who used them as evidence in the trial of the case adopted by them for prosecution (R. 41-42, 58, 59, 69-70, 76-78, 102, 197, 200).

Federal narcotic agent Griffin testified that federal narcotic officers had no standing working agreement with the Houston Police Department whereby they would take all narcotic cases turned over by the police and prosecute them in the federal courts. In some instances the federal authorities refused to accept cases which the local police desired to turn over to them, and it was customary for state officers to file narcotic cases in the state court. (R. 201-202.)

After the arrest on the way to the police station petitioner stated to the police that she guessed she would have to "take the rap for it since she had registered for the cabin"; but later at the homicide office she protested that "she wasn't going to take the rap for it alone when it belonged to all of them" (R. 38, 53). Both petitioner and Mrs. Jarvis had fresh scars on their arms from hypodermic needles (R. 39-40, 90-91).

ARGUMENT

1. Petitioner contends that federal and state officers joined in an illegal federal search and seizure so that her motion to suppress the evidence seized was improperly denied (Pet. 10-12). As both courts below found, however, the search was solely for state purposes so that the evidence seized was admissible in the federal prosecution.

It is true that the deputy marshal originally re-

quested the Houston police to arrange for the arrest of petitioner so that her bondsman could be released from her bond. The marshal, however, was not an officer charged with narcotic law enforcement, had no knowledge that petitioner was sought as a narcotic violator, and his sole desire was to deliver her to the U. S. Commissioner for surrender on her bond. He did not request the search complained of, and neither he nor any other federal officer participated in it (R. 145, 176-177, 200).

The four police officers who made the search had not been told by their superiors to arrest petitioner for surrender on the bond covering her previous federal offense. They had been informed only that they should go to the cabin, where the suspicious money counting had been seen and reported, to investigate for suspected hi-jackers recently operating in that vicinity. Consequently, when the police officers reached the cabin, they were interested only in the state offense of hi-jacking, not in a federal narcotic violation. It was only after they had arrested petitioner and the other defendants for suspected hi-jacking that the search was conducted for evidence of a state violation, but resulted instead in the discovery of the heroin later used as the basis for the federal prosecution.

The evidence showed that there was no standing working agreement between the Houston police and the federal narcotic authorities that they would adopt all cases turned over by the police for federal

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[1] See 28 U.S.C. [Supp. V] § 547 and 549 for the powers of a United States marshal.

prosecution. In some instances the federal authorities refused to adopt state narcotic cases, and it was customary for state officers to file such cases in the state courts. (R. 201-202.)

In these circumstances, where the search was made wholly by state officers acting under state law, with no federal officers present participating, or cooperating in the search, the evidence obtained by the search was admissible in the federal prosecution, even though the search may have been unauthorized. Cf. *Weeks* v. *United States,* 232 U.S. 383, 398; *Serio* v. *United States,* 203 F. 2d 576, 577-578 (C.A. 5), certiorari denied, 346 U.S. 887; *United States* v. *Scotti,* 102 F. Supp. 747 (S. D. Tex.) affirmed, 193 F. 2d 644 (C.A. 5); *Symons* v. *United States,* 178 F. 2d 615, 618-619 (C.A. 9), certiorari denied, 339 U.S. 985; *United States* v. *Diuguid,* 146 F. 2d 848 (C.A. 2), certiorari denied, 325 U.S. 857.

*Lustig* v. *United States,* 338 U.S. 74 (see Pet. 5), does not aid petitioner, for in that case this Court held that the federal agent participated in the search, not because he had furnished the original information to the city officers, as the deputy marshal had done in part in the instant case, but because he had joined in the search before it had run its course.

In *Lustig,* the federal officer was called in before the search was concluded, and he shared "in the critical examination of the uncovered articles as the physical search proceeded" (p. 78) and "had a vital share in sifting the evidence" (p. 79). Here,

on the other hand, the search "had run its course" (p. 78) and "the object of the search was completely accomplished" (p. 79) before the evidence was turned over to the federal authorities. In short, federal officers had no hand in the search; and "it is not a search by a federal official if evidence secured by state authorities is turned over to the federal authorities on a silver platter" (id., 78-79), as in the instant case. [2]

There is no conflict with *Sutherland* v. *United States,* 92 F. 2d 305 (C.A. 4), Pet. 5, which based the rejection of evidence illegally seized by state officers on the fact that there was a working arrangement between state and federal officers. Nor is there a conflict with *Rent* v. *United States,* 209 F. 2d 893 (C.A. 5), where the search was actually conducted by a federal narcotics officer.

2. Petitioner contends that there was no evidence to support her conspiracy conviction under count one (Pet. 14). But there was evidence of the presence of petitioner and Mrs. Jarvis in the tourist cabin in possession of heroin and the hypodermic outfits, evidence of the very recent use of heroin by both women, and petitioner admitted that the heroin belonged to all the occupants of the cabin. The totality of these circumstances was, we believe, sufficient to support petitioner's conspiracy conviction. In any event the conviction under sub-

[2] Neither do *Gambino* v. *United States,* 275 U.S. 310 and *Byars* v. *United States,* 273 U.S. 28 (see Pet. 11, 12) aid petitioner. Unlike the situation here, in *Gambino* the wrongful arrest, search, and seizure were made solely on behalf of the United States, and in *Byars* a federal agent participated in the search to make it a joint operation of local and federal officers.

stantive counts two and three were clearly supported by sufficient evidence. Cf. *Aeby* v. *United States,* 206 F. 2d 296, 298 (C.A. 5), certiorari denied, 346 U.S. 885; *Henderson* v. *United States,* 206 F. 2d 300, 302 (C.A. 5). Petitioner's argument that conviction could not under the Fifth Amendment be based on possession (Pet. 12-13) is in reality an attack on the statutory presumption which has been too often upheld to require discussion. *Casey* v. *United States,* 276 U.S. 413, 418; *Yee Hem* v. *United States,* 268 U.S. 178, 185; see also *Rossi* v. *United States,* 289 U.S. 89, 91. The convictions on the substantive counts would in themselves support the general sentence imposed, assuming *arguendo* that the evidence under the conspiracy count was insufficient. See *Claasen* v. *United States,* 142 U.S. 140, 147-148; *Evans* v. *United States,* 153 U.S. 608, 609; *Hirabayashi* v. *United States,* 320 U.S. 81, 85; *Pinkerton* v. *United States,* 328 U.S. 640, 641-642, fn. 1.

CONCLUSION

The case was decided upon established legal principles, and there is no question of importance to warrant further review by this Court. It is therefore respectfully submitted that the petition for a writ of certiorari be denied.

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